ACLU
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SENATE JUDICIARY
Exhibit No. 5
Date 8 Jan 07
Bill No. SB 109

January 8, 2007
SB 109 TESTIMONY

Chairman Laslovich and Members of the Senate Judiciary Committee.

I am Scott Crichton, Executive Director of the American Civil Liberties Union of Montana, a membership based organization with more than 2,400 dues paying households from across Montana who expect us to defend the Constitution and The Bill of Rights.

Today I stand as an opponent to SB 109 because fundamentally, the right to know is just that, a "right" which ought to be cherished. The right to know needs to be protected not restricted.

In subsections (1) and (2), the right is limited to "any citizen". Note that Section 2-3-203 MCA, does not limit the right to know in such a manner – that only "citizens" may exercise the right to know. Instead, there is a presumption of openness that is not limited by standing considerations. Section 2-3-203 and the section 9 of the Montana Constitution require all agencies to be open unless the demands on individual privacy clearly require otherwise.

Here the use of the word "citizen" wrongfully excludes all those individuals and entities that are covered by the right to know. The use of the word "citizen" is way too vague. Citizen of what? Montana? The United States? What about public interest groups -- which are not citizens? Or, what about a corporate entity? Would a corporate entity or partnership not be allowed to file a right to know petition? Assuming the word "citizen" means a citizen of Montana, how does that affect a person from a state outside of Montana, an entity from outside Montana, a tribal member, a legal alien? All of these people/entities are currently covered by the right to know provision if they meet the Montana Supreme Court definition of standing.

The use of the word "resident" in subsection (2) is just a lawsuit waiting to happen. There are numerous cases in Montana on the definition of "resident". This is a vague term – what about corporate entities, partnerships, public interest organizations? Would they be limited to their business address or could they

exercise the right to know where they do business or have an interest in the happenings? Even if you limited this to residents of say a city or a county, what about the non-residents who use those city or county services? What about people with second homes and are here only through the summer? Would they not have standing to have access to information on the government services they use?

Here a fundamental constitutional right is being limited to "residents" when perhaps non-residents have a significant interest. For example, in the MEIC case which established a fundamental right to clean and healthful environment, public interest groups representing people in Missoula County could contest actions in Lewis and Clark County because of the affects of on downstream water quality. What if Lewis and Clark County officials were to take actions affecting downstream waters or air quality – would not those affected by the water or air quality be "injured" despite the geographical location? In such a situation, one should think the injury would still be found by the courts.

The geographic location restriction is simply inaccurate and flies in the face of the traditional tests for standing – i.e. that the petitioner only needs to show an injury.

I think the courts would have little difficulty given a showing of injury to either a "non-citizen" or "non-resident" that this statute is unconstitutional in limiting the right to know – a fundamental right without a showing of the requisite compelling state interest.

Standing is a matter that really should be determined on a case-by-case level depending upon the claims made in an individual case. This is traditionally an area for the courts because the courts are in the best position to determine whether or nor a plaintiff in a given case has, in fact, suffered injury.